



January 9, 2005

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

**Re: WC Docket No. 05-281: Petition of ACS of Anchorage, Inc. for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area**

Dear Ms. Dortch:

Talk America, Inc. hereby endorses the Comments of CompTel, just filed in this proceeding. We oppose the ACS petition. Unbundling is working in Anchorage, and competition must not now be foreclosed. The ACS petition fails to set out the proper geographic and product market definitions and analysis that would be required for the Commission to evaluate its request for forbearance. And there is no section 271 “backstop” present in the Anchorage market.

Beyond this, in the Omaha decision<sup>1</sup>, the FCC laid out a three-part test, asking if there is a facilities-based carrier willing in a reasonable period of time to offer service. But as to certain of the data presented in the Omaha case, the Commission said it was not “dispositive”<sup>2</sup> – the Commission did not believe it. In the Omaha matter, certain subjective items of “evidence” were not constrained. In the Anchorage matter, subjective or unsupported “evidence” must be rejected. For example, the percentage of locations covered test must not be overbroad in the business market. Different businesses are in different product markets: small T1s are not in the same market with DS-3 facilities that might be able to be served with fiber.

But there’s more. In examining the ACS petition, the Commission must consider whether the relief granted in Omaha<sup>3</sup> has gone too far, by brushing past the obvious evidence of a duopoly in the market. Former Chairman William E. Kennard has observed, “In Great Britain, they decided to clone the monopoly they already had. The result: a duopoly. Better than a monopoly. But as you all know, not really competition,

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<sup>1</sup> *Qwest Omaha Forbearance Order*, FCC 05-170, at ¶59 +.

<sup>2</sup> *Qwest Omaha Forbearance Order*, FCC 05-170, footnote 174: “...we do not find dispositive Cox’s claims that it currently reaches what it characterizes as [REDACTED] of potential enterprise customers with its own facilities”.

<sup>3</sup> *Qwest Omaha Forbearance Order*, FCC 05-170.

and not good enough”.<sup>4</sup> And former Chairman Michael K. Powell has also observed, “... our policy is not one of preferred regulated monopoly or duopoly...”<sup>5</sup>

In Omaha, it is significant that the Commission was willing to base its decision on the presence of a single competitor who had a substantial facilities-based presence in the market. And while the Commission noted other “actual and potential competition” in the market,<sup>6</sup> and observed that under parts of Section 251(c) competitors could still purchase wholesale services from Qwest to resell, and could negotiate interconnection agreements with Qwest, the Commission failed to provide any detail in the Omaha Order on any competition other than the inter-modal cable competitor, Cox. While rejecting the notion of a “duopoly” in the market (without citing the evidence upon which that rejection was based), the Commission gave a chilling sign of impending doom to the few remaining facilities-based CLECs in America: UNE loops and transport could disappear forever, anytime there was success of an ILEC/Cable duopoly – the Commission appears comfortable relying on ILEC/Cable “competition”, plus whatever resellers and unspecified other competitors might be present in the market.<sup>7</sup>

It is not enough to simply assert duopoly conditions do not exist – in Omaha, or in Anchorage. The petitioner must provide the alleged evidence, and the Commission must explicitly, and in detail, determine whether the burden of proof has been met.

Talk America has done everything the Commission has asked of it, in moving swiftly to become a true facilities-based competitor (more about that later). And yet, the economic burdens of constructing duplicative “last mile” facilities are an impossibility to overcome, until significant market share has had time to develop. At this point in development, where the Commission eliminates UNE loops, it has constructed a barrier to entry in a market that cannot be overcome. Competition is blocked. The public interest is not fulfilled.

Even the best of the CLECs lack the formidable financial resources necessary to build-out new “last mile” facilities. And the same is true of the very best of the RBOCs, Verizon, “whose stock has traded more than 30 percent above that of its Baby Bell peers”<sup>8</sup>. The Wall Street Journal reports that less than three weeks ago, “Moody’s Investors Service downgraded the long- and short-term debt ratings of Verizon Communications Inc., citing the high cost and slow pace of its multibillion-dollar effort to upgrade its network with fiber optics... Verizon’s fiber deployment, which is estimated to cost as much as \$20 billion, ‘while technologically robust, will require significant upfront cost, weakening Verizon’s financial metrics over the intermediate

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<sup>4</sup> Address of William E. Kennard, FCC Chairman, CompTel Annual Meeting and Trade Exposition, Atlanta, GA, February 8, 1999.

<sup>5</sup> Remarks of Michael K. Powell, FCC Chairman, CompTel Annual Convention and Trade Exposition, Miami, Florida, March 4, 2002.

<sup>6</sup> *Qwest Omaha Forbearance Order*, FCC 05-170, ¶ 71.

<sup>7</sup> *Qwest Omaha Forbearance Order*, FCC 05-170, ¶ 71.

<sup>8</sup> “Investors Grow Wary As Verizon’s Problems Mount”, Ken Belson, The New York Times, December 29, 2005.

term in exchange for highly uncertain returns’, according to a news release from Moody’s”.<sup>9</sup>

Noted The New York Times less than two weeks ago, “...investors decided in 2005 that Verizon might not be worth the extra money anymore... [they are] worried about the company’s decision to spend billions of dollars to run fiber-optic lines to homes...”<sup>10</sup>

If Verizon cannot profitably build out new “last mile” facilities, who can? If UNE last miles are eliminated from broad swaths of the landscape, what competition will remain?

Nor does Special Access magically allow competition to survive, if UNEs are wiped out. DS0 loops were not part of the TRRO, and one cannot obtain a Special Access version of them. The ILECs did not contest the nationwide finding of impairment from the TRO; Special Access is not available for DS0 UNEs, and is not appropriate in any event. As to Special Access, the “evidence” presented in Omaha by Qwest was fast and loose: Qwest put in some quantities, but did not differentiate wireless or non-CLEC Special Access in the numbers. In Anchorage, ACS must be pinned down as to the details and true evidence for any Special Access quantification claims.

Talk America, over the last 18 months, has transformed itself into just the kind of facilities-based competitor which the Commission has envisioned. To give you the flavor for this, we will describe simply what we have done in the State of Michigan alone.

In 2005, Talk America invested almost \$100 million in the State of Michigan: capital expenditures, infrastructure investments, and the investment in acquiring Michigan-based LDMI Telecommunications. Here’s how we put that investment to good use, for the benefit of consumers and businesses.

The Commission asked us to become a true facilities-based local telecom provider, with our own switches, and providing our own dial tone to customers. CLECs, of course, do this via “collocations” in central office buildings throughout the state. These collocations, with their associated high-tech electronics, are very expensive: \$100,000 and up – each. Talk America, and its LDMI subsidiary, began 2005 with 45 of these collocations in Michigan – one of the largest number of collocations by any CLEC, in any state. But that was only the beginning.

In 2005, Talk added 95 additional \$100,000-plus collocations in Michigan. And we can only give you the flavor of this, by listing the involved collocations we added this year: Algonac; Ann Arbor; Auburn Heights; Bay City; Belleville; Benton Harbor; Brighton; Burton; Center Line; Clarkston; Commerce and Commerce North; Dearborn and Dearborn Fairborn and Oregon; Detroit offices known as Detroit Bell, Hogarth,

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<sup>9</sup> “Moody’s Cuts Verizon’s Ratings”, Dionne Searcy, The Wall Street Journal, December 22, 2005.

<sup>10</sup> “Investors Grow Wary As Verizon’s Problems Mount”, Ken Belson, The New York Times, December 29, 2005.

Lenox, Madison, Niagara, Pingree, Plaza, Redford, Twinbrook, Tyler, University Vermont, and Vinewood; Drayton Plains; Dutton; East Lansing; Fenton; Flat Rock; Flint and Flint North; Grand Blanc; Grand Haven; Grand Rapids, and Grand Rapids EP, ES, South and WS; Highland Park; Holland; Holly; Howell; Hudsonville; Jackson; Kalamazoo; Lake Orion; Lansing and Lansing Northwest and South; Lapeer; Lincoln Park; Marine City; Monroe; Mt. Clemens and Mt. Clemens Clinton and North; New Baltimore; New Haven; Northville; Oxford; Plymouth; Pontiac, and Pontiac North, Northeast and West; Port Huron; Rochester; Romeo; Romulus; Roseville and Roseville North; Royal Oak; Saginaw FA, SH and West; South Lyon; Taylor; Traverse City; Trenton; Troy and Troy Somerset; Utica; Walled Lake; Warren and Warren Techline; Washington; Wayne and Wayne Northwest; Wyandotte; Wyoming; and Ypsilanti.

Altogether, we believe that is the largest successful planning, installation and deployment of collocation “dial tone” facilities by any CLEC, in any state, in any year. And we’ve deployed four new multi-million dollar switching machines in Michigan in 2005.

Talk America has added equipment capacity to serve an additional 300,000 Michigan telephone lines, in 2005 alone. We started 2005 with 25,000 consumer lines and 25,000 business lines “on-net” (served by our switches, and with our own dial tone provided out of our own collocations); we ended 2005 with 205,000 Michigan consumer lines on-net, and 45,000 Michigan business lines on-net. We know of no other CLEC that has completed that many conversions that quickly, and with that little disruption to customers, in any state, in any year.

In 2005 on the technical side, we hired over 50 new Michigan network professionals, to build and maintain the switching network, and to perform high-quality customer installations. Overnight, we’ve created one of the largest professional field installation forces of any CLEC in Michigan. Simultaneously in 2005, we have deployed in Michigan leading-edge, best-in-class network monitoring equipment, which in many cases can detect and help us correct problems before customers are even aware that those problems exist. We are now able to offer our business customers guaranteed service level agreements, to back up our improved network quality and reliability.

In Michigan in 2005, we deployed for the first time high-speed residential Broadband using ADSL 2+ technology with speeds faster than many providers, and now have over 6,000 active customers in some 103 collocations around the state – and we’re just getting started.

To our facilities-based customers, we are able to offer great savings, great quality, great customer service, and great value. That’s thanks to our efforts, and to the availability of truly cost-based UNE loops on an ongoing basis. Essentially all of the facilities-based customers we serve, in Michigan and in other states, is via UNE loops. Period.

Should a dominant cable provider make a major effort to deploy dial-tone to their customers in our market, and should the ILEC then file for forbearance, and should the Commission grant that forbearance, our UNE connections to our customers would then forever be lost. What then happens to our investment? What then happens to our customers, and to unique and innovative services such as “SmarT” that we provide to them? There is no reading of the Telecommunications Act of 1996 which suggests any such outcome was contemplated by Congress. It is bad for consumers, bad for businesses, and it is flat out wrong.

To keep this enterprise thriving and growing, there must be no backsliding on regulatory protections. We need continued cost-based access to “last mile” facilities – the wires which extend from our collocations out to customer premises. That cost-based access to a wide variety of “last mile” facilities was promised by the federal Telecom Act of 1996, and the Commission has a responsibility to insure that in conditions where an ILEC/Cable duopoly arises, the availability of UNE loops is not foreclosed.

There remain powerful forces who oppose true telecom competition, and would wish to strike down the protections which have enabled telecom competition to take root and grow. The Commission must resist those anti-competitive efforts at all costs.

Respectfully submitted,

/s/ Francie McComb

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